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WP.No.3461/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.3461/2017 & WMP.Nos.3435 & 3436/2017

1.R.Murugesan
2.R.Durgadevi
3.L.I.Daniel
4.N.Chandrasekar
5.Jayaramamurthy

... Petitioners

Versus

The Chairman
Medical Services Recruitment Board
359, DMS Buildings, Anna Salai
Teynampet, Chennai-6.

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent relating to the impugned Notification dated 31.01.2016 in Notification No.7/MRB/20 and quash the same and consequently direct the respondents to conduct a Common Eligibility Test for the selection for the post of Dark Room Assistant.



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For Petitioners : M/s.R.Rebecca Vasanthini Percy for
Mr.D.R.Arun Kumar
For Respondent : Mr.M.Loganathan
Standing counsel

ORDER

- (1) Five writ petitioners had originally filed the writ petition in the nature of a certiorarified mandamus seeking records of the respondent relating to a Notification dated 31.01.2016 in Notification No.7/MRB/20 and to quash the same and to direct the respondent to conduct a Common Eligibility Test [CET] for the selection for the post of Dark Room Assistant.
- (2) Even when the writ petition came up for admission, the learned counsel had made an endorsement withdrawing the writ petition with respect to 2nd and 3rd petitioners. The writ petition was dismissed as against petitioners 2 and 3 on that particular date/13.02.2017.
- (3) On that particular date, it had also been observed as follows by the learned Single Judge:-

"3.The learned counsel for the petitioners would submit that the selection process is done purely on



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certificate evaluation and the skill of the candidates participating in the selection process through the written examination or interview, have not been adopted and also prays for interim order on the ground that at the time of next selection, the candidature of the petitioners may be rejected on the ground that they have crossed the prescribed age limit.

...

7.It is made clear that the selection and appointment to the post of Dark Assistant in pursuant to the impugned Notification, is subject to the result of the writ petition and the candidates shall also be put on notice accordingly."

- (4) In the affidavit filed in support of the writ petition, it had been stated that the petitioners aspired to be posted as Dark Room Assistants. They had passed the Certificate Course relating to Radiology Assistant between the years 2006 and 2010. It is further stated that till the year 2013, the recruitment for the various posts were made on the basis of seniority. But then, the respondent, Chairman, Medical Services Recruitment Board at Chennai, had issued a Notification on



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31.01.2016, stating that the selection for the post of Dark Room Assistant will be made on the marks scored by the candidates in the academic and technical qualification. It was proposed that 50% of the marks would be with respect to the marks obtained in the certified courses ; 30% of the marks would be with respect to Higher Secondary School marks and 20% would be with respect to the marks obtained in the 10th standard marks. The petitioners also applied for such post, but they had not received any call letter. It had been stated that the petitioners did not obtain the requisite marks to be so appointed as Dark Room Assistants.

- (5) Learned counsel for the petitioners placed a grievance stating that the examination which was conducted contained questions which were a little difficult to answer. It is the further grievance that for subsequent years, after the introduction of Samacheer Kalvi, those candidates who had undergone the school education under that particular process of Samacheer Kalvi, were able to get higher marks and therefore, the percentage of marks as applicable for 10th and 12th standards, were much higher than what the petitioners had actually obtained during



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their screening test. It is also contended by the learned counsel for the petitioners that an opportunity can be given and a Common Eligibility Test [CET] may be conducted so that all candidates would be placed on a equal footing.

- (6) In the counter affidavit, however, the process of selection had been justified and it is also stated that in W.A.No.1027/2013, by judgment dated 09.06.2014, a Division Bench had held as follows:-

"14. It is also relevant, at this juncture, to note that the Three Judge Bench of the Hon'ble Supreme Court, in the decision reported in 2014 (2) SCALE 262 [Renu and others v. District & Sessions Judge, Tis Hazari and another] reiterated the above said proposition of law and gave a direction to all the High Courts to comply with the purport of Articles 14 and 16 of the Constitution of India while filling up of any vacant post either in the High Court or in the Subordinate Courts throughout the India. In the said decision, the Hon'ble Supreme Court held that #post shall be filled up by issuing the advertisement in atleast two newspapers and one of which must be in vernacular language having wide circulation in the



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respective State, apart from calling for a list from the local employment exchange and any vacancy filled up without advertising as prescribed, shall be void ab-initio and would remain unenforceable and inexecutable except the appointment on compassionate grounds, as per the Rules applicable."

- (7) The method of selection had therefore been justified by further stating that it was based on the directions of the Hon'ble Supreme Court and of the Division Bench. It had been stated that seniority could not be the sole criteria, and to select best available candidate, at least there should be a process for selection and weightage method was introduced. The weightage method included marks obtained in 10th standard examination, marks obtained in the 12th standard and the marks of the exams for which certificates had been received by the petitioners herein. It had been stated that this weightage had been continuously given. It is also stated in paragraphs No.5 and 6 as follows:-

"5.Based on our Hon'ble High Court's direction the Government have issued G.O.[Ms]No.401, Health and Family Welfare [C2] Department, dated



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16.12.2014, by which the Medical Services Recruitment Board follows the procedure for the recruitment of Pra Medical Staff as detailed below:-

- (a) Vacancy details received from the appointing authority for all direct recruitments to the post of **Para Medical and Technical Staff** are notified to the Employment Exchange.
- (b) The list of eligible candidates will be sponsored by the Employment Exchange. The sponsored candidates will be intimated to apply online for the concerned post, when the advertisement by open notification is issued by the Medical Services Recruitment Board through two newspapers as per the High Court directions.
- (c) Open advertisement in at least two newspapers [one of which will be in vernacular language] will be published for inviting application from all candidates. [All eligible candidates irrespective of their registration in employment exchange are eligible to apply online].
- (d) The process of selection shall be based on the marks obtained by the candidates in various examinations by giving weightage to their academic performance, age duly following communal rotation.



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6.It is submitted that a provision has been given for 50% weightage for marks scored in CRA in 7a of the Medical Services Recruitment Board's Notification No.7/MRB/20 dated 31.01.2016. However, if any batch of the candidates who have undergone CRA course have not been awarded marks, in such instance, in order to maintain equality among candidates, the weightage of marks scored only in HSC/SSLC is taken as selection criteria for all the applicants. This provision is there to ensure parity among all the applicants having minimum educational qualification, as per the Notification. Hence, the contention of the petitioners that the above selection procedure is arbitrary/illegal is not correct."

- (8) With respect to the marks obtained by the petitioners herein, it had been stated that the 1st petitioner, R.Murugesan who belongs to Backward Class community, obtained 25.88 marks, whereas the last ranked candidate under the same category, had obtained 28.8 marks, which was higher than that of R.Murugesan/1st petitioner herein. Similarly, the 4th petitioner, N.Chandrasekar, who belongs to Scheduled Caste community, had obtained 25.64 marks, whereas the



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last ranked candidate in the same category had obtained 28.77 marks.

The 5th petitioner Jayaramamurthy, who belongs to Backward Class community, had obtained 23.01 marks whereas the last ranked candidate in the same category had obtained 28.8 marks. It had therefore been stated that similarly placed candidates had obtained higher marks and therefore, the petitioners cannot claim any right to be appointed.

(9) In view of this particular data provided by the respondent, it may not be possible on the part of this Court to sit over and above the respondents as a Selection Committee and direct the appointment of petitioners 1, 4 and 5 herein. As contended by the learned counsel for the respondent, petitioners 1, 4 and 5 having not scored the requisite marks, cannot claim preference to be appointed or exception from the weightage method not being adopted and that the experience alone should be the criteria and appoint them as Dark Room Assistants.

(10) It is also stated that the petitioners are prepared to write a Common Eligibility Test. The respondents may examine that particular



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representation if it is given in writing by petitioners 1, 4 and 5 or by anybody else and if it is so made, examine that particular proposition and take a considered decision.

(11) It is stated by the learned counsel for the respondent that the issue of conducting a Common Eligibility Test will have to be addressed only to the Government and a policy decision in that regard will have to be taken by the Government.

(12) The Court is not issuing any mandamus, but only placing on board the statement made by the learned counsels across the Bar.

(13) The writ petition therefore, stands **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2023

AP

Internet : Yes

To

The Chairman

Medical Services Recruitment Board

359, DMS Buildings, Anna Salai

Teynampet, Chennai-6.



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C.V.KARTHIKEYAN, J.,

AP

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